**IN THE HIGH COURT OF UTTARANCHAL**
**AT NAINITAL.**

## CONTEMPT PETITION NO. 217 of 2004.

Daljit Singh. Petitioner

Versus

1. Munna Lal Sachan.
2, Sandeep Kumar.
3. O.N.Sdmittal.
4. P.Ram.
5. Sunder Lal Muyal.
6. L.P. Pandey. ...Respondents.

Sri S.K. Mandal, Advocate for petitioner.
Standing counsel for the respondents.

**HON'BLE PRAFULLA C. PANT- J.**

1. This civil contempt petition has been moved under section 12 of Contempt of Court Act, 1971 complaining the wilfull disobedience of order dated 12.07.2002 passed in writ petition No.726 of 2001 (M/B).

2. Heard learned counsel for the parties and perused the record.

3. The impugned order of which disobedience has been complained, is reproduced as under:

"heard Sri S.K.Mandal, learned counsel for the petitioner, learned Sri N.B.Tewari, learned S.C. and Sri Brahm Singh Verma, learned S.C. Government of U.P.

As per the present arrangement the water of Sarda canal is being released from time to time to Praveem river. The grievance of the petitioner is that because of excessive release of water roughly about 15 villages abutting the rive have been affected causing damage to crops in the agricultural fields. In view of this, we have issued notice to S.D.O., Irrigation Head

Work, Sarda Canal Division, Banbasa. Pursuant thereof, Sri M.C.Upadhayaya, Assistant Engineer is present in court.

On behalf of the Assistant Engineer and on behalf of the authorities, the learned counsel for the respondents made a statement that in the present situation, the authorities shall regulate the release of water in Parveen river in such a manner and as far as practicable that it will not affect the surrounding areas and agricultural fields abutting Parveen river.

Having regard to the present climatic condition, we direct the authrities that they will take utmost care to save the agricultural fields from the excessive water release in Parveen river.

With this the petition is disposed of.

Sd/ C.J. Sd/Irshad Hussain J."

4. From the above order it is clear that the direction is not absolute in its nature, rather it is worded with the expression "as far as practicable". While considering the wilfull disobedience of the order this court has to keep in mind that the river flow not only depends on the release of water of Sharda canal but also the monsoon rain particularly during the month of July, August and September. The opposite parties in response to the notice issued by this court, have field the counter affidavits alongwith the chart in the from of copy of Gauge register of Head Work Division Sharda Canal, showing daily flow through old S.D. feeder. After the aforesaid order of the court the flow of water has been maintained by not releasing more that 399 cusecs of

water which is clear from the pages 31 to 34 of the counter affidavit. The photographs annexed with the petition showing the crop damaged due to the over flowing water, are of the date 19th of July, 2004 In the month of July it can not be ruled out if the crop is damaged due to the rain water. The opposite parties in their counter affidavits have stated that they have made every efforts not to disobey the court's order and made their best efforts to save the crop from being damaged. Since in the matter in dispute, it is not that the human act alone but also the nature which may cause the damage to the crops. As such,in the circumstances it can not be said if the opposite parties have committed any willful disobedience of the court's order.

5. In view of the above discussion, the civil contempt petition is liable to be dismissed. The same is dismissed and the notices are discharged.

Dated: November 16, 2004. **(Prafulla C. Pant, J.)**
S.S.Negi..